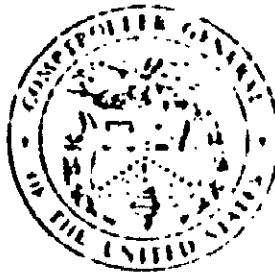


118479
DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-207277.2

DATE: May 25, 1982

MATTER OF: Tennier Industries, Inc.

DIGEST:

1. Protest concerning a bidder's ability to meet contractual requirements will not be considered since GAO does not review affirmative determinations of responsibility in the absence of a showing of fraud or an allegation that definitive responsibility criteria were misapplied.
2. Failure to acknowledge receipt of an amendment which merely extends the bid opening date may be waived as a minor informality.

Tennier Industries, Inc. protests the award of a contract to Fancy Industries, Inc. under invitation for bids (IFB) No. DLA100-32-B-0397 issued by the Department of the Army for sleeping bags. Essentially, Tennier alleges that Fancy and its subcontractor, New York Feather Corporation, lack the ability to successfully perform the contract. Tennier also contends that Fancy failed to acknowledge Amendment No. 1 to the solicitation.

Whether Fancy has the ability to perform the contract is a matter of the firm's responsibility, which must be determined in the affirmative prior to award. The Nedlog Company, B-203263, July 7, 1981, 81-2 CPD 17. Tennier's allegations regarding New York Feather's ability to perform also relate to Fancy's responsibility. See Patterson Pump Company; Allis-Chalmers Corporation, B-200165, B-200165.2, December 31, 1980, 80-2 CPD 453. Our Office does not review protests against affirmative determinations of responsibility unless either fraud on the part of the procuring officials is shown or the solicitation contains definitive responsibility criteria which allegedly have not been properly applied. Toloco Industries, Ltd.,

B-202984, May 6, 1981, 81-1 CPD 358. Neither of these circumstances is present here. Consequently, we will not review the protest as to responsibility.

Concerning Fancy's failure to acknowledge Amendment No. 1 to the solicitation, the agency advises that the amendment did nothing more than extend the bid opening date. The failure to acknowledge receipt of an amendment which merely extends the bid opening date may be waived as a minor informality. Edward E. Davis Contracting, Inc., B-198725, January 13, 1981, 81-1 CPD 19. We therefore find no basis for objection to acceptance of Fancy's bid as submitted.

The protest is dismissed in part and summarily denied in part.

for William D. Arnold
Comptroller General
of the United States